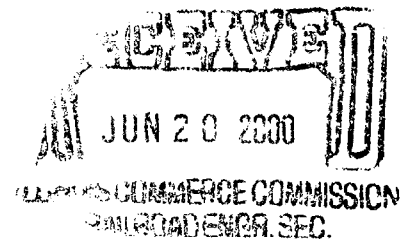


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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION



STATE OF ILLINOIS, :
DEPARTMENT OF TRANSPORTATION :
vs. :
CSX TRANSPORTATION :

Petition for permission to construct a new :
grade separation structure to carry IL 159 :
over and across the dual mainline tracks of :
CSX Transportation south of Collinsville, :
St. Clair County. :

T00-0054

To the Illinois Commerce Commission.

Petitioner herein respectfully shows and represents:

1. That the Petitioner is the State of Illinois, acting by and through its Department of Transportation, whose address is the Harry R. Hanley Building, 2300 South Dirksen Parkway, Springfield, Illinois 62764.

2. That the Petitioner proposes to reconstruct a grade separation structure to carry Illinois 159 over and across the dual mainline tracks of the CSX Transportation Company in St. Clair County.

3. That it is necessary to preserve or promote the safety of the public and for public convenience and necessity, to construct the grade separation structure substantially as proposed herein.

4. That the Petitioner has an executed Agreement with the Respondent, CSX Transportation, for the construction, maintenance and division of expense of the improvement herein proposed, and copies of the fully-executed Agreement are attached to the petition for Commission approval.


DOCKETED

Wherefore, the Petitioner asks that the Commission view the place of the proposed crossing, if deemed necessary, and, without holding a hearing, provide by an Order, the place where and the manner in which the crossing may be made and the proportion of work, expense and future maintenance involved therein that each of the parties will be required to assume in and upon completion of the project, as set out in the Agreement entered into between the parties, by approving the said Agreement.


The Respondent named herein is the other party having an interest in the matter, Petitioner believes, and respondent can be notified by addressing Mr. Dale W. Ophardt, CSX Transportation, 4901 Belfort Road, Liberty Business Park, Suite 130, Jacksonville, FL 32256, telephone (904) 245-1138.

Dated at Springfield, Illinois this 16 day of June, 2000.

STATE OF ILLINOIS
Department of Transportation


Cheryl Cathey, P.E.
Chief of Preliminary Engineering

STATE OF ILLINOIS)
)
DEPARTMENT OF TRANSPORTATION)


Cheryl Cathey, P.E.
Chief of Preliminary Engineering

this 16th day of June, 2000.

Linda H Jones
Notary Public, Illinois



This AGREEMENT made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE" and CSX TRANSPORTATION, INC. hereinafter referred to as the "COMPANY".

WITNESSETH:

THAT, WHEREAS, Federal Aid Primary Route 600 (marked Illinois Route 159) as located and constructed south of Collinsville in St. Clair County, Illinois, there crosses over Canteen Creek and the dual mainline tracks and right of way of the COMPANY by means of a highway overpass structure; and

WHEREAS, said overpass structure was constructed by the STATE under an Agreement entered into between the STATE and Consolidated Rail Corporation, predecessor to the COMPANY, on June 3, 1980 and Illinois Commerce Commission Order 80-0407 entered on August 6, 1980; and

WHEREAS, in the interest of public safety, the STATE proposes to reconstruct and widen the existing structure and highway approaches all substantially as shown on the general plan sheets marked Exhibit 1 and 2 attached hereto and wade a part hereof; and

WHEREAS, the approval of the Illinois Commerce Commission is required for the reconstruction of the existing structure in the manner as herein proposed.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereto agree as follows:

SECTION 1. The STATE shall by separate document secure or cause to be secured, without expense to the COMPANY, all right of way required for the construction of the highway overpass structure and the approaches thereto.

SECTION 2. The preliminary and detailed plans, specifications and special provisions for the highway overpass structure and the approaches shall be prepared by or for the STATE at its expense; and all such plans, specification and special provisions, affecting the interests of the COMPANY, shall be subject to approve by the COMPANY'S authorized representative.

SECTION 3. No changes shall be made on any approved plans, specifications or special provisions by either party hereto without the consent in writing of the other party.

SECTION 4. The parties hereto shall construct or cause to be constructed, in substantial accordance with the approved plans, specifications and special provision the following items of work,

- (1). WORK BY THE STATE. The STATE shall furnish or cause to be furnished, at its expense, all the labor, materials, and work equipment required to perform and complete,
 - (a). The reconstruction of the existing highway overpass structure.
 - (b). The performance of the grading on the approaches to the said overpass structure, including the installation of any necessary drainage structures thereunder.
 - (c). Incidental work necessary to complete the items hereinabove specified.

The STATE's work shall be awarded to a competent and experienced contractor who has adequate equipment, organization and finances, and the COMPANY shall be notified of the contractor (or contractors) receiving such award for all work affecting the COMPANY's interest.

(II). WORK BY THE COMPANY. No work except preliminary and construction engineering is expected.

The COMPANY's estimated engineering cost is \$4102.10.

SECTION 5. Subsequent to the award of any contract, and before any work is started on this project, a conference shall be held between the representatives of the STATE, the COMPANY, and the interested contractor (or contractors), at a time and place as designated by the STATE'S representative, for the purpose of coordinating the work to be performed by the several parties, and at which time a schedule of operations will be adopted.

SECTION 6. Each party will provide the necessary construction engineering and inspection for carrying out its work as herein set forth, and the costs for such services shall be borne by the STATE. The costs as incurred by the COMPANY for inspecting the work performed by the STATE as may affect its properties and facilities, or the safety and continuity of train operations, shall be borne by the STATE.

SECTION 7. The temporary minimum clearances, with reference to the COMPANY'S tracks, of any necessary falsework, bracings or forms as required for the reconstruction of the overpass structure shall be not less than,

Vertical – 21 feet 6 inches above top of high rail; and

Lateral – 8 feet 6 inches from the centerline of track.

SECTION 8. The STATE shall require its contractor(s) to perform the work in accordance with the "Standard Specifications for Road and Bridge Construction" adopted January 1, 1997, and the "Supplemental Specifications" in effect on the date of invitation for bids. A single Railroad Protective Liability Insurance policy, naming the COMPANY, shall be carried in limits of \$2,000,000 combined single limit per

occurrence for bodily injury liability and property damage liability with an aggregate limit of \$6,000,000 over the life of the policy as set forth in Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 646, Subpart A (23 CFR 646A).

Flagging bills may be presented by the COMPANY to the STATE'S contractor on a monthly basis with a final bill presented in a timely manner after completion of the project. The COMPANY will thereupon receive prompt payment from the contractor who will be reimbursed by the STATE in accordance with the Standard Specifications, Supplements or revisions thereto and/or any applicable special provisions.

SECTION 9. The COMPANY agrees to indemnify the STATE against and save it harmless from loss and damage to property, and injury to or death of any person or persons, and from court costs and attorney's fees, and expenses incident thereto, arising out of the work to be performed hereunder by the COMPANY, and caused by the negligence of the COMPANY, or any contractor for the COMPANY, or their respective officers, agents or employees.

SECTION 10. The STATE shall require its contractor (or contractors), before entering upon the COMPANY'S rights of way for performance of any construction work, or work preparatory thereto, to secure permission from the authorized representative of the COMPANY for the occupancy and use of the COMPANY'S right of way outside the limits of the highway overpass structure, and to confer with them relative to the requirements for railroad clearances, operation and general safety regulations.

SECTION 11. The safety and continuity of operation of the traffic of the COMPANY shall be at all times protected and safeguarded, and the STATE shall require its contractor (or contractors) to perform the work accordingly. Whenever the work may affect the safety of trains, the method of doing such work shall first be submitted to the COMPANY'S authorized representative for his approval without which

it shall not be commenced or prosecuted. The approval of the COMPANY'S authorized representatives shall not be considered as a release from responsibility, or liability for any damage which the COMPANY may suffer, or for which it may be held liable by the acts of the contractor, or those of his subcontractor, or his or their employees.

SECTION 12. The STATE shall require its contractor, upon the completion of the work of such contractor, to remove from within the limits of the COMPANY'S right of way all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of such contractor and to leave the right of way upon which the said contractor carried on operations in a neat condition, satisfactory to the authorized representative of the COMPANY.

SECTION 13. When the construction on this grade separation project is completed, the STATE shall maintain at its expense, or by agreement with others provide for the maintenance of, the highway overpass structure, the approaches, and all highway facilities. In the event of railroad derailments, accidents or collisions growing out of the negligence of the COMPANY, and resulting in damage to the highway overpass structure, the STATE shall make the repairs necessary to restore the said overpass structure substantially to its former condition, and the COMPANY agrees to reimburse the STATE for the actual cost of such repairs. The COMPANY further agrees not to erect, nor grant permission to others to erect, any advertising signs that would be visible from the highway pavement on COMPANY'S property within the limits of the highway's right of way lines extended across the COMPANY'S property.

SECTION 14. The COMPANY shall keep an accurate and detailed account of the actual cost and expense as incurred by it, or for its account, in the performance of the work it herein agrees to perform.

The COMPANY, for performance of its work as outlined in Section 4 hereof may

bill the STATE monthly (in sets of four) for the costs and expenses it has incurred.

The COMPANY, upon the completion of its work, shall render to the STATE a detailed statement (in sets of four) of the actual cost and expense as incurred by it or for its account. After the STATE'S representatives have checked the progressive invoices and the final statement and they have agreed with the COMPANY'S representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall promptly reimburse the COMPANY for ninety-five (95) per cent of the amount as agreed upon; such reimbursements, however, are subject to the provisions of Section 15 hereof.

The COMPANY shall maintain, for a minimum of 5 years after the completion of contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books records, and supporting documents related to the contract shall be available for review and audit by the Auditor General and other STATE auditors; and the COMPANY agrees to cooperate fully with any audit conducted by the Auditor General and other STATE auditors and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

After the Federal or State representatives have audited the expenses as incurred by the COMPANY, including such items of expense as may have been suspended from any previous payment, the STATE shall promptly reimburse the COMPANY for the retained percentages and suspended items of expense, less the deduction of any item

(or items) of expense as may be found by the Federal or State representatives as not being eligible for reimbursement. If the total of the item (or items) of expense, as may be found by the Federal or State representatives as not being eligible for reimbursement, exceeds the retained percentage plus any items of expense which may have been suspended, then the COMPANY shall promptly reimburse the STATE for the overpayment.

SECTION 15. It is understood that the project herein contemplated shall be subject to all appropriate Federal laws, rules, regulations, orders and approvals pertaining to all agreements, plans estimates, specification, award of contracts, acceptance of work and procedure in general. The STATE will reimburse the COMPANY as hereinbefore provided, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment.

SECTION 16. It is the policy of the U.S. Department of Transportation that minority business enterprises, as defined in 49 code of Federal Regulations (CFR) Part 23, shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with Federal funds. Consequently, the minority business enterprises requirements of 49 CFR Part 23 apply to this AGREEMENT.

The COMPANY agrees to ensure that minority business enterprise, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of this AGREEMENT. Subject to the COMPANY'S existing labor agreements, the COMPANY shall take all necessary and reasonable steps, in accordance with 49 CFR Part 23, to ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of this AGREEMENT. The COMPANY shall not discriminate on the basis of race, color, national origin or sex in the selection and retention of

contractors, including procurement of materials and leases of equipment.

The COMPANY shall include this provision in every subagreement, including procurement of materials and leases of equipment.

Failure to carry out the requirements set forth above shall constitute a breach of agreement and may result in termination of the AGREEMENT or such remedy as deemed appropriate.

In the event any work is performed by other than COMPANY forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County, City or any public body or any political subdivision or by any one under contract for public work" (Illinois Compiled Statutes, 820 ILCS 130/1) shall apply.

SECTION 17. In The event that delays or difficulties arise in securing Federal approval or in acquiring rights of way, or in settling damages or damage claims, or for any other cause which in the opinion of the STATE render it impracticable to proceed with the construction of the project, then at any time before a construction contract is executed or actual construction is started, the STATE may serve formal notice of cancellation upon the COMPANY and this agreement shall thereupon become null and void.

SECTION 18. At the time this AGREEMENT was executed, there were funds available for the project herein contemplated; however, obligations assumed by the STATE under this agreement shall cease immediately, with penalty or payment, should the Illinois General Assembly or the Federal Highway Administration fail to appropriate or otherwise make available funds for the project.

SECTION 19. The AGREEMENT is subject to all terms contained in the "State Required Ethical Standards Governing Contract Procurement", attached hereto as

Attachment A and made a part hereof.

SECTION 20. Pursuant to the International Anti-Boycott Certification Act, Illinois Public Act 88-671, the COMPANY certifies that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.

SECTION 21. Under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 54-600072 and the COMPANY is doing business as a corporation.

SECTION 22. The agreement shall be binding upon the parties hereto, their successors or assigns.

In WITNESS WHEREOF, the parties have cause this Agreement to be executed in duplicate counterparts, each of which shall be considered as an original, by their duly authorized officers, as of the dates below indicated.

Executed by the STATE, this 10th
Day of May, 2000

STATE OF ILLINOIS, acting by and
through its Department of Transportation,

By James C. Steyers
Director of Highways

Executed by the COMPANY, this _____ CSX TRANSPORTATION, INC.

Day of _____, 2000

Witness:

By H. H. Hopkins
H. H. Hopkins
Chief Engineer D & C

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ATTACHMENT A

STATE REQUIRED ETHICAL STANDARDS GOVERNING CONTRACT PROCURMENT

The certifications hereinafter made by the COMPANY are each a material representation of fact. The STATE may terminate the agreement if it is later determined that the COMPANY rendered a false or erroneous certification.

Bribery. Section 50-5 of the Illinois Procurement Code provides that: (a) no person or business shall be awarded a contract or subcontract under this Code who: (1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or (2) has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.

No business shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business, and: (1) the business has been finally adjudicated not guilty; or (2) the business demonstrates to the governmental entity with which it seeks to contract, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961.

For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

Every bid submitted to and contract executed by the State shall contain a certification by the COMPANY that it is not barred from being awarded a contract or subcontract under this Section. A COMPANY who makes a false statement, material to the certification, commits a Class 3 felony. The COMPANY certifies that it is not barred from being awarded a contract under Section 50-5.

Educational Loan. The Educational Loan Default Act provides that no State agency shall contract with an individual for goods or services if that individual is in default, as defined by Section 2 of this Act, on an educational loan. Any contract used by a State agency shall include a statement certifying that the individual is not in default on an educational loan as provided in this Section.

Bid Rigging/Bid Rotating. Section 33E-11 of the Criminal Code of 1961 provides: (a) that every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the COMPANY that it is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Code. The state and units of local government shall provide appropriate forms for such certification.

A COMPANY that makes a false statement, material to the certification, commits a Class 3 felony.

A violation of Section 33E-3 would be represented by a conviction of the crime of bid-rigging which, in addition to Class 3 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation, and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

A violation of Section 33E-4 would be represented by a conviction of the crime of bid-rotating which, in addition to Class 2 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

The COMPANY certifies that it is not barred from contracting with the Department by reason of a violation of either Section 33E-3 or Section 33E-4.

International Anti-Boycott. Section 5 of the International Anti-Boycott Certification Act provides that every contract entered into by the State of Illinois for the manufacture, furnishing, or purchasing of supplies, material, or equipment or for the furnishing of work, labor, or services, in an amount exceeding the threshold for small purchases according to the purchasing laws of this State or \$10,000, whichever is less, shall contain certification, as a material condition of the contract, by which the COMPANY agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act. The COMPANY makes the certification set forth in Section 5 of the Act.

Drug Free Workplace. The Illinois Drug Free Workplace Act applies to this contract and it is necessary to comply with the provisions of the Act if the COMPANY is a corporation, partnership, or other entity (including a sole proprietorship) which has 25 or more employees.

The COMPANY certifies that if awarded a contract in excess of \$5,000 it will provide a drug free workplace by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the COMPANY's workplace; specifying the actions that will be taken against employees for violations of such prohibition; and notifying the employee that, as a condition of employment on such contract, the employee shall abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (b) Establishing a drug free awareness program to inform employees about the dangers of drug abuse in the workplace; the COMPANY's policy of maintaining a drug free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations; (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract and to post the statement in a prominent place in the workplace; (d) Notifying the Department within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of the conviction of an employee for a violation of any criminal drug statute occurring in the workplace; (e) Imposing or requiring, within thirty (30) days after receiving such notice from an employee of a conviction or actual notice of such a conviction, an appropriate personnel action, up to and including termination, or the satisfactory participation in a drug abuse assistance program approved by a federal, state, or local health, law enforcement, or other appropriate agency; (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place; (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the actions and efforts stated in this certification.

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